

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT K. DECKER,
Plaintiff,

v.

LILITA INFANTE, *et al.*,
Defendants.

_____/

Case No.: 19-11654

Matthew F. Leitman
United States District Judge

Curtis Ivy, Jr.
United States Magistrate Judge

ORDER ON OUTSTANDING MATTERS (ECF Nos. 115; 116; 123).

This matter is presently before the Court regarding ongoing issues with Plaintiff's Fourth Amended Complaint, Plaintiff's motion to extend, Plaintiff's motion to correct the name of the case, and Defendant's motion to strike or alternatively to set a responsive pleading deadline. (ECF Nos. 115; 116; 123).

On January 10, 2023, the Court granted Plaintiff's motion to amend his complaint and ordered Plaintiff to file a Fourth Amended Complaint on or before January 31, 2023, that complied with the Court's previous instructions and the ones contained in that order. (ECF No. 108). On January 30, 2023, Plaintiff filed a motion seeking an extension to comply with the Court's order because his mail is delayed on an "extreme basis." (ECF No. 115, PageID.756). On February 7, 2023, Plaintiff's Fourth Amended Complaint, dated January 27, 2023, arrived at the Court. (ECF No. 119). The February 7, 2023, complaint is brief and lacks the factual support present in prior complaints.

Federal Rule of Civil Procedure 6(b)(1)(A) permits the court to extend the time to act if good cause is shown where, as here, the request is made before the time to act has expired. Plaintiff indicates his mail is delayed and he lacked adequate time to respond to the Court's order. The Court concludes Plaintiff has demonstrated good cause to extend, the motion is **GRANTED**. (ECF No. 115). Plaintiff may file, on or before **March 26, 2023**, a Fourth Amended Complaint which complies with the Court's instructions.

Plaintiff is cautioned that should he file an amended complaint the document submitted will be the **sole and exclusively controlling document** and the Court will not look beyond said document for any factual or legal support. The Court **will not** consider any factual or legal issues raised in previously filed complaints, motions, or any other filings. If Plaintiff chooses to file an amended complaint, **Plaintiff's amended complaint will constitute the complaint in its entirety**. If Plaintiff files a controlling Fourth Amended Complaint in accordance with this order, the Court shall strike as moot the document filed on February 7, 2023. (ECF No. 119). Plaintiff is cautioned that his countless amendments and corrections are continuing to confuse and substantially delay the adjudication of his case. Plaintiff should draft carefully as his next submission will be considered the operative amended complaint.

If Plaintiff fails to file an amended complaint by March 26, 2023, the document filed on February 7, 2023, shall constitute the complaint in its entirety and the Court shall screen it pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) (When a plaintiff is proceeding in forma pauperis, “the court shall dismiss the case at any time if the court determines that . . . the action or appeal. . . fails to state a claim on which relief may be granted.”). The Court will not consider any factual or legal issues raised in previously filed complaints, motions, or any other filings in screening the complaint.

Plaintiff also seeks an extension to regarding Defendants Hayes, Infante, and Motyka. (ECF No. 115). In the same January 10, 2023, Order discussed above, the Court instructed Plaintiff to show cause on or before January 31, 2023, why Defendant Hayes should not be dismissed for failure to timely serve him under Fed. R. Civ. P. 4(m) and/or for failure to prosecute the case under Fed. R. Civ. P. 41(b). (ECF No. 108, PageID.709); *Order, Show Cause, Black’s Law Dictionary* (11th ed. 2019) (“An order directing a party to . . . explain why the party took (or failed to take) some action or why the court should or should not impose some sanction or grant some relief.”). In that same order, the Court also ordered Plaintiff to provide an address for Defendants Infante and Motyka on or before January 31, 2023. (ECF No. 108, PageID.710). As Plaintiff has established good cause for extension as discussed above, Plaintiff’s motion to extend is **GRANTED**. (ECF

No. 115). On or before **March 26, 2023**, Plaintiff must show cause as to why Defendant Hayes should not be dismissed and provide information for service of Infante and Motyka.

Within **45 days of March 26, 2023**, Defendants must answer the operative complaint. The operative complaint will either be a newly filed Fourth Amended Complaint or the document filed as the Fourth Amended Complaint on February 7, 2023. The Court shall strike the document filed on February 7, 2023, should Plaintiff choose to file a new Fourth Amended Complaint. As the Court has set a new deadline for the operative complaint and a responsive pleading deadline, Defendants motion to strike is **DENIED AS MOOT**. (ECF No. 123).

The United States of America has been added as a Defendant in this case. The Court sees no benefit to ordering the clerk to change the case name in light of a newly added Defendant. Plaintiff's motion to correct the name of the case is **DENIED**. (ECF No. 116).

IT IS SO ORDERED.

The parties here may object to and seek review of this Order, but are required to file any objections within 14 days of service as provided for in Federal Rule of Civil Procedure 72(a) and Local Rule 72.1(d). A party may not assign as error any defect in this Order to which timely objection was not made. Fed. R. Civ. P. 72(a). Any objections are required to specify the part of the Order to which

the party objects and state the basis of the objection. When an objection is filed to a magistrate judge's ruling on a non-dispositive motion, the ruling remains in effect unless it is stayed by the magistrate judge or a district judge. E.D. Mich. Local Rule 72.2.

Date: February 10, 2023,

s/Curtis Ivy, Jr.

Curtis Ivy, Jr.

United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that this document was served on counsel of record and any unrepresented parties via the Court's ECF System or by First Class U.S. mail on February 10, 2023.

s/Kristen MacKay

Case Manager

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